

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

JEREMY SHANE COX, #1488776

§

VS.

§

CIVIL ACTION NO. 6:10cv431

DIRECTOR, TDCJ-CID

§

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-entitled and numbered petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 was heretofore referred to United States Magistrate Judge Judith K. Guthrie. The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Petitioner has filed objections.

Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. Specifically, Petitioner re-argues the position he raised in his original response to the Magistrate Judge's Order to Show Cause regarding the statute of limitations. That is, he contends that the limitations period in his case should be computed based on the date the Texas Court of Appeals issued its mandate on his direct appeal, relying on his contention that *Gonzalez v. Thaler*, 623 F.3d 222 (5th Cir. 2010) is in conflict with the holdings of other Circuit Courts of Appeals. He misunderstands the Magistrate Judge's Report and Recommendations. The United States Supreme Court has affirmed the Fifth Circuit's holding in *Gonzalez*, explicitly negating the position the Petitioner asserts; therefore, any former Circuit split as propounded by Petitioner has been

resolved. *See Gonzalez v. Thaler*, - - - S. Ct. - - - -, 2012 WL 43513, at *10-11 (Jan. 10, 2012).

Petitioner's objections are therefore without merit and are overruled. It is therefore

ORDERED that Petitioner's objections are **OVERRULED** and his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 31st day of January, 2012.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE